

PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

Minutes of Meeting
February 12th, 2008
Olympia, Washington

Members Present: Chair Tom Carr, Frank Garred, Ken Bunting, Ramsey Ramerman, Tim Ford, Patience Rogge, Candy Jackson, and Roselyn Marcus.

Members Absent: Representative Lynn Kessler, Representative Jay Rodne, Senator Pam Roach, Senator Adam Kline, and Frank Garred.

Staff present: Jean Wilkinson, Counsel, and Cynthia Jordan

Opening: Chair Tom Carr called to order the meeting of the Public Records Exemptions Accountability Committee at 5:35 p.m. on February 12th, 2008, at the Department of Natural Resources Building, room 175 A & B, 1111 Washington St. SE, Olympia, WA 98501.

2. Approval of Final Minutes for January 8th, 2008 Sunshine Committee Meeting.

Motion: Ramsey Ramerman moved to adopt the minutes, seconded by Tim Ford. The motion passed unanimously.

3. Miscellaneous committee business

Item 3a: Discussion of format for recommendations – Based on feedback from a senate staffer regarding the language of the proposed recommendation for the Applications for Public Employment drafted by Chair Carr for the legislature at the January 8th, 2008 meeting. He suggested that in the future the committee recommend what the intent is and not draft the legislative language. Allow the legislative professionals do the drafting. I move that we replace the bill language that was approved 8-1 ([42.56.250\(2\)Recommendation](#)) at the last meeting with the recommendation language, Public Records Accountability recommendation, [RCW 42.56.250\(2\)](#), for the material adopted at our January 8th, 2008 meeting. Jean Wilkinson clarified that the committee members can identify the one that the Chair's motion is recommending replacing has two sections of backgrounds and recommendations.

Discussion:

- Ms. Marcus echoed the Chair's recommendation that the committee just make recommendations and not draft the language.
- Mr. Garred would like assurance that the committee would have a chance to review the legislative draft to ensure that the intent is intact.
- Mr. Bunting offered that the legislative website would carry the changes so the committee could review the changes.
- Mr. Ramerman agreed, but wanted the committee to have the flexibility to draft specific recommendation language if the committee felt strongly about it. Mr. Ramerman will rewrite the Child Mortality and Minority ([42.56.250\(2\)MinorityReportRamerman](#)) report that he had drafted to reflect the recommendation format. There was no vote, as it is just a procedural matter.

Item 3b: Once written recommendation is proposed, should voting, be delayed for one discussion of format for recommendations

– Chair Carr would like to allow the introduction of a recommendation at one meeting and then vote on it at the next. Mr. Garred felt that this would benefit the process by allowing committee member's to digest the proposal and come back ready to vote. The benefit of this is that email public comment can be received, allowing more input for consideration. Mr. Ford agreed that this approach is fine, but he prefers to not belabor an exemption. Mr. Ford believes that it's important to get these recommendations to legislature to enact legislative reform. Chair Carr reminded the committee that Representative Lynn Kessler encouraged the committee to send recommendations anytime and not hold them until the November 15th report. The consensus of the committee was in agreement.

Item 3c: Definition of “exemption”– This agenda item was something that Senator Kline wanted to discuss; however he is not present, so we will revisit this when our legislative representatives are present.

4. Applications for public employment exemption – [RCW 42.56.250\(2\)](#)

Item 4a: Discussion – Draft summary of recommendation approved on January 8 – Chair Carr drafted a recommendation and would like to apply the agreed upon rule: discuss it today; make any changes; and vote on it at the March meeting. That would give everyone fair notice and we did receive public comment during the month to consider. Mr. Bunting feels that the draft captured what the committee wanted. Mr. Ramerman noted two things that were not captured successfully was the timing aspect of disclosure, that previous discussion is that it would be after the hiring the decision was made, not before; and only to the finalist, not all the applicants. Mr. Ramerman felt that it needs to be clear if it is after the selection of the finalist or after the position is filled. Chair Carr agreed that the committee's intent was to limit it to the finalist, after the selection process is complete by the appointing authority, so he will draft new recommendations with two possible inclusions: one with disclosure being during the selection process; and the other after the selection process is complete. Each draft will be considered and voted on at the March Sunshine Committee meeting to reflect the intent of the committee.

Discussion:

- *Mr. Garred felt that applicant's information should be disclosable during the selection process, not after the selection has been made.*
- *Mr. Bunting asked what the current law states on this exemption? Chair Carr responded that currently applications for public employment are exempt. Mr. Bunting agreed with Mr. Garred.*
- *Mr. Ford pointed out that under the current Public Records Act these applications would not be disclosable. There is debate in the legal community as to whether under the Open Public Meetings Act (OPMA) that the selection of a finalist would be permitted in executive session, as to whether that is a final action that is prohibited in executive session. Mr. Ford's interpretation of the OPMA is to encourage the selection of finalist to be in OPMA.*
- *Chair Carr clarified that even if the selection were made during an OPMA the application would not necessarily be available. All we are recommending is the finalist resumes. In the vetoed language of 42.56.250(2) there was language that stated there had to be 3 finalist, my feeling is that the number of finalist seems to be a matter of choice, 2 – 10, but if you designate them as the finalist then their applications should be disclosable as some point.*
- *Mr. Garred – Looking at this from the perspective of the communities and I wonder how much public involvement there is when appointing high positions at the agency level in comparison to the school boards that involve the public in the process. There is a difference between appointees at the local level and statewide level.*
- *Chair Carr shared that one of the issues raised in testimony and emails is does the exemption cover Department. Chairs at Colleges and Community Colleges? It would be my intent that it covers the Head or President of a Community College, or University, but not necessarily the Chair of a Department. I believe that this would be a good change for us to recommend.*
- *Mr. Ford stated that his understanding was that when Chair Carr spoke about executive positions he was not talking about multi-member boards or committees, but rather the Director of an agency.*
- *Chair Carr – That was my intent. I tried to capture that language in the draft the concept that it would be the highest person/position at an agency. Mr. Ramerman drafted a minority report ([42.56.250\(2\)MinorityReportRamerman](#)) and the committee will have the opportunity to review and vote on that at the next meeting. We will have that for vote at the next meeting.*

5. Infant Mortality Review Exemptions – [RCW 42.56.360\(1\)\(f\)](#) and 70.05.170(3)

Item 5a: Discussion – Draft summary of recommendations approved on January 8th – ([Child Mortality Review Recommendation](#)). Mr. Ramerman and Mr. Ford summarized suggestions for this recommendation that were received by email. The Sunshine Committees recommendation's on Infant Mortality Review that was approved January 8th. Mr. Ramerman proposed that he update this recommendation so that it is not bill drafting, but explicitly outlines what the recommended changes are, without trying to draft language. Chair Carr clarified that Mr. Ramerman would like to bring this recommendation back to the next meeting in a different form. That would give the committee the opportunity to consider it and vote at the April meeting whether to have it replace the original recommendation that was already approved.

Public Testimony

Hallie Johnson, Secretary of the Washington State SIDS Foundation - Our hope is that you will not change the wording. It is our understanding that you feel that it current wording would impede law enforcement; however our experience has been opposite that. Our review, being a separate review does not impact that police investigations. Redefining this exemption may impact our ability to freely help families and the health and safety of children.

Mr. Ramerman - The committee recognized the intent of the statute and child death review's exemption, and support that. Our concern is that the language applies to any record or document supplied or maintained for the purposes of a Child Mortality Review, and we feel that it is overbroad. The goal of the committee is to protect the confidentiality of the families that are participating in the review and the medical records, but if there are documents that don't involve confidential information then they should be released. It seems that the only information disclosed is a final report, if one is ever published. The committee does feel that the exemption can be narrowed without compromising the ability of the CDR Teams to conduct the reviews.

Discussion:

- *Mr. Garred – In RCW 70.05.170(3), paragraph 3, is that existing language?*
- *Mr. Ramerman – We need guidance from the entities that actually use these, but we keep hearing “Don’t do anything” which does not give us anything to work with.*
- *Mr. Ford – The intent of the statue was to assist the state in identifying factors that could reduce both infant and child mortality and that might be promoted with further disclosure of some reports as long as confidentiality was maintained of participants identity. That was the broad goal.*

7. Exemptions related to agriculture

Item 7a): Legislative history presentation and committee discussion –
[RCW 15.65.510](#) , [22.09.040](#) and [22.09.045](#) , [43.23.270](#)

Jean Wilkinson referred to a document the Department of Agriculture passed out today to be placed in the binder that they gave to each committee member at an earlier meeting. Jean then gave legislative background and history.

RCW 15.65.510 – All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential. Protects information submitted to the Department of Agriculture related to commodity marketing agreements. Exempts information identifiable to an individual. Does not exempt reports based on a number of individuals, or the name of a person violating a marketing agreement.

RCW 22.09.040 and 22.09.045 – All financial statement information required by this subsection shall be confidential not subject to public disclosure. Warehouse operators and grain dealers must be licensed by the Department of Agriculture and must submit financial statements to the Department. Regulation of these businesses protects the owners of products who use the services of warehouses and grain dealers. The law requires these businesses have a minimum net worth as shown in the financial statements.

RCW 43.23.270 – Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. Information held by Department of Agriculture related to export market development projects is exempt if it is financial information readily identifiable to a person.

Item 7b): member questions about agriculture exemptions – There were no questions, or public comment.

Discussion:

- *Mr. Ramerman – From a user’s standpoint gathering the agricultural exemptions in one spot would be helpful, clearly identifying them in the Public Records Act as agricultural exemptions.*
- *Chair Carr has a sense that agricultural exemptions are very broad and that there are many of them. One of our charges is to reduce the number of exemptions while still protecting confidential business and financial information. We see duplicate language and it seems that it doesn’t need to be in both places by making it clear that if it is in the Public Records Act then it is exempt.*
- *Mr. Ramerman – We should consider making the recommendation that legislature gather all exemptions under the Public Records Act and give a clear description what they are about.*
- *Mr. Garred – Some of these exemptions: proprietary information; financial records; business information; relate to other exemptions, is there a definition of these descriptions? Is there a clear definition of what “proprietary information” or “financial record” is?*
- *Mr. Ramerman – I don’t think that there is a universal definition of any of these descriptions.*
- *Mr. Garred – I think that elements that may potentially affect the health or safety of humans, or environment that fall under “proprietary information” I do have a concern with that being exempt. I would like to see something drafted for consideration that incorporates my concerns.*
- *Chair Carr asked Mr. Ramerman to draft a general recommendation for the committee to discuss at the next meeting and he will work with Mr. Garred to draft a recommendation that reflects his view for the committee to consider at the next meeting.*
- *Mr. Bunting – Financial Trade and competitive information make sense. I agree that the discretionary language needs to be reviewed.*
- *Mr. Ramerman – Discretionary language is a default. We want public agencies to have the discretion to not exert an exemption.*
- *Chair Carr – An agency can waive an exemption, but not create one on their own.*
- *Ms. Marcus – I thought in the response from the Director of Agriculture that sometimes applicants marked confidential, but if the Director does not believe that it is has the discretion to release it, which makes things more disclosable, not less.*
- *Chair Carr - My plan would be to have these recommendations circulated before the March meeting, have discussion and finalize recommendations at the that meeting, and vote at the April meeting. That will close off further discussions on the Agricultural Exemptions.*

8. Exemptions related to public employment – [RCW 28C.18.020\(2\)\(m\)](#) and [79A.25.150](#)

Jean Wilkinson gave RCW background and history.

RCW 28C.18.020(2)(m) – Workforce Training/Education Coordinating Board (<http://www.wtb.wa.gov/>)

The lists compiled by the committee shall not be subject to public disclosure. This exemption protects the list of names of candidates for executive director of workforce training and education coordinating board. Candidates for director are nominated by business and labor representatives who are members of the board. The list is submitted to the governor who then appoints the director.

RCW 79A.25.1500 – Recreation and conservation committee, (<http://www.rco.wa.gov/>). The governor shall select the director from a list of three candidates submitted by the board. However, the governor may request and the board shall provide an additional list or lists from which the governor may select the

director. The lists compiled by the board shall not be subject to public disclosure. List of names of candidates for the director of recreation and conservation office (formerly called the interagency committee on outdoor recreation). Candidates for director are nominated by the recreation and conservation funding board.

Discussion:

- Ms. Marcus - The Chair of the board, Val Ogden, did send a letter to Chair Carr and the Governor's Office, so you will be receiving a copy of that.
- Mr. Bunting recommended that the directors of these two boards (Recreation and Conservation Committee and the Workforce Training/Education Coordinating Board) be contacted via email to shed light on why these are exempt.
- Mr. Ford – A committee compiles a list for the governor, they are not the ones doing the hiring.
- Mr. Ramerman – These exemptions encourage a robust applicant pool. These two exemptions are duplicative and an example of exemptions that should be gathered in one place.
- Ms. Marcus – It would be more informative to the committee to hear from the committee's that actually compile the list.
- Mr. Garred – Consider the scrutiny when we were selected for this committee. Why do other boards and commissions escape that same level of scrutiny?
- Chair Carr – They balance for when the public needs to know is when a director is being selected.
- Ms. Jackson – If the public is making the list, then the list should be made public at some point. Maybe it is the language says that the governor may reject the list and request another pool that makes it so they don't want that list made public.
- Chair Carr – Mr. Bunting suggested that he would like to see these gone. Chair Carr offered to write a short one line recommendation for the next meeting to discuss that recommendation and vote on it at the April meeting. In the meantime the agency directors will be invited to comment on these exemptions. There is little interest in changing these two specific exemptions; they are either there or not.

Chair Carr adjourned the meeting at 7:10 p.m.

APPROVED: March 25, 2008